(3)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR CHHATTISGARH

Writ Petition No. 500 of 2001

Petitioner : APPLICANT

Dashoda Bai w/o Ashok Kumar Verma aged about 38 years , R/o village Baiharsari P.O. Sarangpurkala Tah.& Distt. Kawardha. (C.G.)

V/s

Respondents:

1) Shyam Bai w/o Ramkadaru Verma aged about 52 years, R/o Baiharsari Tah. & Distt. Kawardha.

2) Collector, Kawardha, Distt. Kawardha

3) Sub- Divisional Officer Competent Officer (panchayat) Kawardha .

4) Presiding Officer (panchayat) Vikas Khand Bodala, Gram Panchayat Baiharsari , Tah. & Distt. Kawardha.

5) Asstt. Presiding Officer (Election) Shri Som Nayak, Tahsildar Bodala village panchayat Election Baiharsari Tah.& Distt. Kawardha.

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA.

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(52)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P.No. 300/ सन् 2001

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

26.11.2001

Smt.Renu Kochar, learned counsel for the petitioner.

Shri H.B.Agarwal, learned counsel for the respondent No.1.

Shri Deep Kesharwani, learned Panel Lawyer for the respondents No.2 to 5.

Heard.

2. The petitioner was elected Sarpanch of village Baiharsari. The election result was declared on 1st February, 2000. Being aggrieved, respondent No.1 filed election petition before Sub-Divisional Officer. Returns were filed by the writ petitioner as well as the Returning Officer. The learned Sub-Divisional Officer ordered that recount of votes be made. Being aggrieved by the said order passed on 30th January, 2001, the petitioner filed revision petition before the Collector, Kawardha. In the said revision petition, recount ordered by the S.D.O. was upheld vide order dated 26th February, 2001. Hence, this petition under Article 226 of the Constitution of India.

3. Smt.Renu Kochar has very strenuously urged before me that in the present facts and circumstances of the case the respondent No.1 has not made out a case for recount. In other words, it is submitted that it is not a case of recount inasmuch as recount has to be made only in very exceptional cases because of the fact that

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ballots once counted and then packed and sealed should not be likely opened. The case of the writ petitioner is that at the time of counting, the respondent No.1 had not made any complaint as regards irregularity in the counting. It is however stated by Smt.Renu Kochar that the respondent No.1 made a request for recount after the results were announced and only having lost the election the respondent No.3 made the contest which was made belatedly and infact at the time when the Returning Officer was to leave for Bodla. In the return filed by the Returning Officer before the S.D.O., it was stated that no rule or procedure has been violated by him in the counting of the votes. According to the Returning Officer, counting was done in the presence of the representatives of the candidates. It was further stated that since the votes / ballot papers had been sealed it was not possible for him to re-open at such a belated stage inasmuch as no application was made during the course of counting the votes.

4. Smt.Renu Kochar relies on a Supreme Court decision reported in 1997 6 SCC 66 which was considered in 1999 1 J.L.J. 200 para 90. It is contended that in view of the aforesaid Supreme Court decision it is a settled legal position that secrecy of ballot should not be breached and as far as possible the secrecy of ballot should be maintained. It is further contended that in rare cases the Tribunal or the Court is required to order recount that

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मामला क्रमांक W.P.No.300/ सन् 200(

आदेश पत्रक (पूर्वानुबद्ध)

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too on giving satisfactory grounds for recounting. In the present case we are to see whether the requirement prescribed in ~~Rule 30~~ ~~of~~ the M.P.Panchayat Nirvachan Niyam, 1995 are fulfilled.

5. In the aforesaid Supreme Court Case, which is relied upon by Smt.Renu Kochar, it was further held "in view of the fact that the rule itself provides that as soon as the result of election is announced an application in writing must be made at the first instance and the fact that no such application has been placed before the Court which indicates that no such application had been made on the date of the declaration of the result. The allegation of an application having been made would be an after thought". It appears to me that in the case referred to in the Supreme Court Case, there was no application made by the defeated candidate. In the present case, an application was infact made but after the declaration of the result. In view of the above decision of the Supreme Court it appears to me that there is no infirmity as far as the application of the defeated candidate is concerned, inasmuch as such application was indeed made soon after the declaration of the result. What Smt.Renu Kochar submits is that on receipt of such application the Returning Officer should proceed to decide the fate of the application. This was not done. The Returning Officer sought to explain how he dealt with the said application when he submitted return before the S.D.O.

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	6. In my opinion, since a protest had been made by filing an application before the Returning Officer, the respondent No.1 had every right to agitate the said matter before the Election Tribunal as his application was not considered favourably by the Returning Officer. In the present case, the S.D.O. after hearing the parties and upon perusal of certain documents submitted before him came to the conclusion that a case for recount was made out. Hence recount was ordered. The Collector exercising Revisional Authority also upheld the finding of the S.D.O. It cannot be said that if the ballot papers are open and recount is made such action would in any way cause prejudice to any of the parties on merit. It is for the competent Election Tribunal to examine this issue. Since the Election Tribunal is satisfied that a case for recount has been made out and particularly because of the fact that respondent No.1 had already submitted his complaint to the Returning Officer soon after the results were announced, I see no infirmity in impugned orders. 7. In my view, there is not scope for this Court to interfere with the impugned orders passed by the S.D.O. and also by the Collector. 8. In the result this petition is dismissed. Sd/- Chief Justice	

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SS/-